

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE )  
SUBSTANTIAL DEVELOPMENT PERMIT )  
ISSUED TO DES MOINES SEWER )  
DISTRICT BY KING COUNTY, )  
JOSEPH B. & VERNA E. SMALL, )  
Appellants, )  
v. )  
KING COUNTY AND DES MOINES )  
SEWER DISTRICT, )  
Respondents. )

SHB No. 82-37  
FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a permit revision, came before the Shorelines Hearings Board, Gayle Rothrock, Chairman, David Akana (presiding), Nancy R. Burnett, Rodney M. Kerslake, A. M. O'Meara and Lawrence J. Faulk on February 24, 1983, in Lacey.

Appellants appeared pro se; respondent permittee was represented by its attorney Edward W. Taylor; respondent King County did not appear.

1 Having heard the testimony, having examined the exhibits and  
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent Des Moines Sewer District (hereinafter "respondent") is  
6 the holder of substantial development permit No. 056-81-SH issued by  
7 King County on March 30, 1982. The permit allowed the installation of  
8 about 2,725 feet of 8-inch diameter gravity sewers, two lift stations,  
9 and about 1,775 feet of pressure main in Zenith, Washington. The  
10 location of the sewer line alignment was as shown in exhibit No. 20-1  
11 of the permit.

12 II

13 Pump Station No. 2 was located on Terry Court in exhibit No.  
14 20-1. In July of 1982, the pump station was installed 10 feet south  
15 of its planned location, which was directly east of appellants'  
16 property, and 5 feet south of the right-of-way in Terry Court.<sup>1</sup>

17 Appellants' residential property has a western exposure to Puget  
18 Sound. Appellants' home is located near the water. Between the home  
19 and the garage is a bank with a 25 to 30 percent slope. Further  
20 upland is a retaining wall in addition to appellants' garage. And  
21 further east, about 8 to 10 feet, is Pump Station No. 2. The pump  
22 station is located about 40 feet from the top of the 25 to 30 foot  
23

---

24 1. While it is not required, Des Moines Sewer District could have  
25 informed nearby property owners about the change in the location  
of pump station No. 2 before construction commenced.

1 slope which leads down to appellants' residence. The slope is  
2 vegetated.

3 III

4 Installation of the pump station required the excavation of a 15  
5 by 25 foot area to 20 or 25 feet below ground surface for two buried  
6 structures. Three 8-inch diameter gravity sewer lines discharge into  
7 the pump station from the north, south and east. A 4-inch diameter  
8 force main carries the waste water away to the north. The sewer lines  
9 were laid in trenches up to about 12 feet below ground surface and  
10 surrounded with pervious sand and gravel materials. The pump station  
11 was placed on pea gravel and backfilled with pit run sand and  
12 gravels. There are no provisions to drain ground water which may  
collect in the pump station fill materials.

14 IV

15 Appellants anticipated an 11-foot trench for a sewer line in the  
16 area, but did not expect to see a pump station and a 25 foot deep  
17 excavation. As the lateral trenches were dug from the excavation,  
18 appellants became concerned for the stability of the earth bank along  
19 the east portion of their property and consulted a geotechnical  
20 engineer.

21 V

22 Appellants' geotechnical engineers investigated the site and  
23 concluded that the slope was currently stable. Some concerns were  
24 expressed about the excavation area for Pump Station No. 2 acting as a  
25 control collection point for ground water intercepted by the sewer

1 line trenches: 1) a deep-seated slope failure, 2) slope erosion,  
2 shallow slope failure, and/or undermining of the garage, and 3)  
3 increased ground water flow and seep through subsurface walls of the  
4 Smalls' home. It was recommended that the pump station backfill be  
5 drained.

6 VI

7 Respondent's consultant made further investigation of the site and  
8 concluded that the saturation of the pump station backfill would not  
9 change the ground water pattern which previously existed. Although  
10 there was a possibility of slope instability, it was not thought to be  
11 increased by respondent's activities. The chance of a deep-seated  
12 slope failure was deemed remote.

13 VII

14 On September 7, 1982, after reviewing the conclusions of the  
15 consultants, King County concluded that the construction of the pump  
16 station was unlikely to cause additional adverse impacts to  
17 surrounding properties.

18 VIII

19 By letter dated October 14, 1982, respondent applied for a  
20 revision to permit No. 056-81-SH to move the location of Pump Station  
21 No. 2 ten feet south onto private property. After reviewing the  
22 request, King County found that the request met the standards of WAC  
23 173-14-064 and the revision was approved. From this action,  
24 appellants appeal.

IX

In January, 1983, appellants observed a seep in a brick wall and ivy covering alongside the slope. This observation verified their concern for water in the slope and its cause.

Appellants have also observed that the surface of the vault was not level and may be sinking. Respondent's consultants explained that such installations were rarely level.

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

I

WAC 173-14-064 governs revisions to permits and provides in part that:

When an applicant seeks to revise a substantial development, conditional use, or variance permit, local government shall request from the applicant detailed plans and text describing the proposed changes in the permit.

(1) If local government determines that the proposed changes are within the scope and intent of the original permit, local government may approve a revision.

(2) 'Within the scope and intent of the original permit' shall mean the following:

(a) No additional over water construction will be involved;

(b) Lot coverage and height may be increased a maximum of ten percent from the provisions of the original permit: Provided, That revisions involving new structures not shown on the original site plan shall require a new permit, and: Provided further, That any revisions authorized under this subsection

shall not exceed height, lot coverage, setback or any other requirements of the master program for the area in which the project is located.

(c) Landscaping may be added to a project without necessitating an application for a new permit: Provided, That the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the master program for the area in which the project is located;

(d) The use authorized pursuant to the original permit is not changed;

(e) No additional significant adverse environmental impact will be caused by the project revision.

Appellants rely on subsections 2 (b, c, d, and e) in support of their case.

Subsection (b) allows structures shown on the site plan to increase lot coverage and height a maximum of ten percent from the provisions of the original permit as long as the master program requirements are met. Pump Station No. 2, shown on the original site plan, was moved 10 feet south. There was no additional lot coverage involved in the move. The vent stack height increase above original plans was not shown to be improper. No master program requirement was shown to be violated by the relocation of the pump station.

Subsection (c) allows landscaping to be altered or added to a project without a new permit if it is consistent with the original permit and the master program. No inconsistency was demonstrated.

Subsection (d) restricts the use authorized to that described in the original permit. There is no change of use involved in this revision as compared to the use described in the original permit. There is a change in the location of the pump station, but the use has not changed.

1 Subsection (e) provides that there shall be no additional  
2 significant adverse impact caused by the revision. The record shows  
3 some disagreement between experts relating to waterflow and earth  
4 movement. On balance, however, the "potential" hazards to the Smalls'  
5 property have not been shown to be a probable occurrence as a result  
6 of the revision. However, Des Moines Sewer District should monitor  
7 the ground conditions from time to time, to anticipate or note any  
8 slope stability problems that occur, and take any necessary corrective  
9 action.

10 II

11 Appellants have not shown that King County erred in the  
12 application of WAC 173-14-064 to the instant revision. Accordingly,  
13 the action of the County should be affirmed.

14 III

15 Any Finding of Fact which should be deemed a Conclusion of Law is  
16 hereby adopted as such.

17 From these Conclusions the Board enters this  
18  
19  
20  
21  
22  
23  
24  
25

ORDER

The permit revision approved by King County is affirmed.

DATED this 5<sup>th</sup> day of March, 1983.

SHORELINES HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Gayle Rothrock

GAYLE ROTHROCK, Chairman

Lawrence J. Faulk

LAWRENCE J. FAULK, Member

Nancy R. Burnett

NANCY R. BURNETT, Member

Rodney M. Kerslake

RODNEY M. KERSLAKE, Member

A. M. O'Meara

A. M. O'MEARA, Member